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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/692,288	10/23/2003	Gregory Swedberg	50037.201US01	7119

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EXAMINER

SANTIAGO, ENRIQUE L

ART UNIT PAPER NUMBER

2671

DATE MAILED: 02/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/692,288

Applicant(s)

SWEDBERG ET AL.

Examiner

Enrique L Santiago

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 1-22 are rejected under 35 U.S.C. 102(e) as being anticipated by David et al. Patent Application Publication no. US 2004/0189669 A1.

The applied reference has a common inventor with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

-Regarding claim 1, David et al. teaches a system comprising: a visual system, the visual system receiving calls from one of a program and a window desktop manager to construct a hierarchical data structure (see page 2, section [0013], lines 5-7, page 4, section [0047], lines 1-8); and a unified composition engine (see fig. 2), the unified composition engine receiving

commands from the visual system (see figs. 2 and 3, section [0048], lines 1-16), wherein the unified composition engine constructs a compositor data structure in response to the commands to provide graphics output (see figs. 2 and 3, section [0048], lines 1-16).

-Regarding claim 2, David et al. further teaches a system wherein the unified composition engine comprises a first composition service decoupled from a second composition service (see section [0013], lines 10 and 16-17), the first composition service incorporated into the visual system (see section [0013], lines 10-15), and configured to provide data to the second composition service (see section [0013], lines 10-21).

-Regarding claim 3, David et al. teaches a system further comprising: a master resource table included in the visual system (see sections [0025], [0061], [0063]), wherein the master resource table comprises a first list of resources used by one of the application and the desktop window manager (see section [0061]); and a slave resource table included in the unified composition engine (see sections [0059-0061]), wherein the slave resource table includes a second list of resources provided to the unified composition engine, the slave resource table being managed by the master resource table (see sections [0059-0063]).

-Regarding claim 4, David et al. further teaches a system wherein the second list of resources is an inclusive list of resources when compared to the first list of resources (see sections [0064], [0100]).

-Regarding claim 5, David et al. further teaches a system wherein the master resource table is responsible for giving out handles (see sections [0061-0062]), reference counting handle records, resources and realizations, sending resources to the slave resource, and controlling the lifetime of the slave resource table resources (see sections [0061-0065], [0081]).

-Regarding claim 6, David et al. further teaches a system wherein the master resource table explicitly controls the lifetime of slave resource table resources via serialized requests (see section [0063]).

-Regarding claims 7 and 17, David et al. further teaches a system wherein the same library is executing the same compositions when the unified composition engine operates in response to the desktop window manager and when the unified composition engine operates in response to a program (see section [0105]).

protocols for use with the desktop window manager comprise a functional subset of the protocols available when an application is the client (see section [0097]).

-Regarding claim 8, David et al. further teaches a system wherein protocols for use by the unified composition engine when responsive to the desktop window manager comprise a functional subset of the protocols for use by the unified composition engine when responsive to the program (see fig. 11, section [0105]).

-Regarding claims 9 and 19, David et al. further teaches a system wherein the slave resource table resources are accessed on a single composition thread (see section [0067]).

-Regarding claims 10 and 20, David et al. further teaches a system wherein the unified composition engine runs as a single thread and runs in a constant composition loop (see fig. 7, sections [0067 and 0114]).

-Regarding claim 11, David et al. teaches a system further comprising additional visual systems that communicate to the unified composition engine such that the graphics output corresponds to the visual systems (see section [0014] and [0048]).

-Regarding claim 12, David et al. teaches a system further comprising additional unified composition engines that communicate to the visual system such that multiple graphics outputs are produced that correspond to the visual system (see fig. 4, section [0058]).

-Regarding claim 13, David et al. teaches a method comprising: receiving calls from one of a program and a desktop window manager, wherein a hierarchical scene structure is constructed in response to the calls (see section [0013]); communicating information that represents changes to the hierarchical data structure to a unified composition engine (see figs. 2, 3 and 6, sections [0013 and 0048]); communicating a set of resources to the unified composition engine (see figs. 8 and 9, section [0088 and 0089]), wherein the set of resources correspond to a master resource table that is related to the hierarchical data structure (see sections [0060-0061]); updating information in the compositor data structure based on the communicated information (see section [0014]); updating a slave resource table based on the communicated set of resources (see section [0015]), wherein the slave resource table is related to the compositor data structure (see section [0015]); and processing the compositor data structure to output graphics information (see section [0048-0049]).

-Regarding claim 14, David et al. further teaches a method wherein constructing the hierarchical scene structure process is asynchronously performed in comparison to the processing of the compositor data structure to produce the output graphics information (see sections [0047 and 0053]).

-Regarding claim 15, David et al. further teaches a method wherein the slave resource table comprises a list of resources that is an inclusive list of resources when compared to the master resource table (see sections [0059-0061]).

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-Regarding claim 16, David et al. teaches a method further comprising controlling the lifetime of the slave resource table resources in response to the master resource table (see section [0063]).

-Regarding claim 18, David et al. further teaches a method wherein protocols for use by the unified composition engine when responsive to the desktop window manager comprise a functional subset of the protocols for use by the unified composition engine when responsive to the program (see fig. 11, section [0140]).

-Regarding claim 21, David et al. teaches a method further comprising communicating additional information and additional sets of resources to the unified composition engine such that the graphics output information corresponds to additional programs (see section [0014] and [0048]).

-Regarding claim 22, David et al. teaches a method further comprising communicating the information and set of resources to multiple unified composition engines such that multiple graphics output information is produced that corresponds to the one of program and desktop window manager (see fig. 4, section [0058]).

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

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Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claim 1 is provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of copending Application No.10/402,322.

This is a provisional obviousness-type double patenting rejection since the conflicting claims have not in fact been patented.

Although the conflicting claims are not identical, they are not patentably distinct from each other because the only difference is that the present claims do not include "a change queue... traversing..." The omission of an element and its function where not needed is obvious. *Ex parte Rainu*, 168 USPQ 375 (PTO Bd. Of App. 1969). The omission of an element and its function in a combination is an obvious expedient if the remaining elements perform the same functions as before. *In re Karlson*, 136 USPQ 184 (CCPA 1963).

Claim 2 is provisionally rejected as being unpatentable over claim 2 of copending Application No. 10/402,322. Said dependent claims are identical in both applications.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 7 and 17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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After ending claims 7 and 17 the applicants state the limitation “protocols for use with the desktop window manager comprise a functional subset of the protocols available when an application is the client.” It is unclear whether said limitation is part of claims 7 and 17.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Enrique L Santiago whose telephone number is 703 306-5908. The examiner can normally be reached on Monday to Friday from 7:00 A.M. to 3:30 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mark Zimmerman whose telephone number is 703 305-9798, can be reached on Monday to Friday from 7:00 A.M. to 3:30 P.M.

Any response to this action should be mailed to:

Commissioner of Patents and Trademarks

Washington, D.C. 20231

or faxed to:

703 872-9306 (for Technology Center 2600 only)

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive, Arlington, VA, Sixth Floor (Receptionist).

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR

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system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Enrique L. Santiago

February 8, 2005

A handwritten signature in black ink, appearing to read "Mark Zimmerman", with a long horizontal flourish extending to the right.

MARK ZIMMERMAN
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2600